

CALIFORNIA COASTAL COMMISSION

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Staff: Fernie Sy-LB
Staff Report: November 22, 2006
Hearing Date: December 12-15, 2006
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-06-225

APPLICANTS: Channel Reef Community Association & City of Newport Beach

AGENT: Mark Sites

PROJECT LOCATION: 2525 Ocean Boulevard, China Cove Beach, Corona Del Mar Beach, and Ruby Avenue Beach; City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Dredge the Channel Reef Community Association Marina to remove 7,000 cubic yards of sand and temporarily pump it to a sand-berm dewatering pit at China Cove Beach. The sand will then be distributed to two different sites for beach nourishment: 1) Ruby Avenue Beach (1,500 cubic yards) and 2) Corona Del Mar State Beach (5,500 cubic yards).

SUMMARY OF STAFF RECOMMENDATION:

This coastal development permit is only for the deposition of suitable dredged material for beach nourishment. The actual dredging activity, although regulated by the U.S. Army Corps of Engineers (USACOE) and the Regional Water Quality Control Board (RWQCB), is exempt from coastal development permit requirements because it is required for the maintenance of existing navigational channels, pursuant to Section 30610(c) of the Coastal Act. Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

The major issues before the Commission relate to fill of coastal waters, impacts to water quality, marine environment, public access and hazards associated with the proposed project. Staff is recommending **APPROVAL** of the proposed project subject to **SEVEN (7) SPECIAL CONDITIONS** requiring: **1)** dredge spoil compatibility; **2)** eelgrass surveys; **3)** *Caulerpa taxifolia* surveys; **4)** submittal of USACOE and other state or federal discretionary permits; **5)** submittal of an operations staging plan; **6)** timing of construction limitation; and **7)** acknowledgment of risk.

LOCAL APPROVALS RECEIVED: Approval in Concept from the City of Newport Beach Harbor Resources Department dated May 11, 2006; and Regional Water Quality Control Board (RWQCB) Clean Water Act Section 401 Water Quality Standards Certification dated July 20, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Findings of approval for Coastal Development Permit No. 5-06-117 and Federal Consistency Certification CC-031-06; Coastal Development Permit No. A5-5IRC-99-301; Letter from Commission staff to Mark Sites dated July 7, 2006; Letter from Mark Sites to Commission staff dated July 18, 2006; and *Physical Sediment Testing Results* by MBC Applied Environmental Sciences dated May 17, 2006.

LIST OF EXHIBITS

1. Vicinity Maps
 2. Site Plan
 3. Profiles
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I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-225 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITONS

1. **DREDGE SPOIL COMPATIBILITY**

- A. The dredged material shall meet all applicable federal and state beach nourishment or dredge spoil discharge requirements and comply with the grain size requirements for the locations as cited below.
- B. Dredged material meeting Environmental Protection Agency (EPA) and Regional Water Quality Control Board (RWQCB) criteria and the following criteria for beach replenishment may be deposited as beach nourishment in accordance with project plans: Material utilized for beach nourishment shall have a sand content that is either i) greater than 80% sand; or ii) at least 75% sand and within 10% of the sand content of the receiver beach. Any material that meets the requirements outlined above for beach nourishment and consists of less than 80% sand shall only be placed upon submerged beach areas (i.e. below the water line).
- C. Dredged material that does not meet the physical or chemical standards for beach replenishment shall not be discharged at the site. At such time, the applicants shall identify an alternate location suitable to accept contaminated sediment. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

2. EELGRASS SURVEYS

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicants shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicants shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is legally required.

3. PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicants shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

- C.** Within five (5) business days of completion of the survey, the applicants shall submit the survey:
- (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D.** If *Caulerpa taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. REGULATORY APPROVALS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide to the Executive Director evidence of U.S. Army Corps of Engineers (USACOE) and all other required state or federal discretionary permits for the development herein approved. The applicants shall submit copies of the permits and inform the Executive Director of any changes to the project required by such permits. Such changes shall not be incorporated into the project until the applicants obtain a Commission-approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

5. OPERATIONS STAGING

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and approval, two (2) full size sets of staging plans for each of the project sites (China Cove Beach, Ruby Avenue Beach and Corona Del Mar State Beach) that include the following:
- (1) A map of the location of the project construction headquarters(s).
 - (2) Site plans for all construction staging areas and access routes, including berm location and stockpile areas.
 - (3) Special staging and parking needs for heavy equipment.
 - (4) No pipes or any other equipment shall be stored on the beach when not in operation.
 - (5) Vertical and lateral beach access will be maintained at all times.

- B.** The applicants shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No change to the program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

6. TIMING OF CONSTRUCTION

By acceptance of this permit, the applicants agree to minimize adverse impacts to China Cove Beach, Ruby Avenue Beach and Corona Del Mar State Beach resulting from construction activities approved pursuant to Coastal Development Permit No. 5-06-225, as required below:

No construction shall occur during the “peak use” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.

7. RISK DISCLAIMER

By acceptance of this permit, the applicants acknowledge and agree that the sites may be subject to hazards from waves and erosion and that the beach nourishment authorized by this Permit is not permanent but is temporary and does not provide long term shoreline protection.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, BACKGROUND INFORMATION, PROJECT DESCRIPTION AND PREVIOUS COMMISSION ACTION ON SITE

1. Project Location and Background Information

The location of the Channel Reef Community Association Marina where the dredge will take place is at 2525 Ocean Boulevard (Exhibit #1). This marina is located near the entrance of Newport Harbor on County of Orange Tidelands and is just north of China Cove Beach, a sandy public beach. A 58-foot long rock groin was installed here in the early 1960's between China Cove Beach and the marina to protect the docks and vessels from the southerly swell that enters the harbor due to the orientation of the jetties. The groin was also designed to halt sand flow into the marina caused by the south swell pushing sand northward from China Cove Beach. Over the past two decades, the Channel Reef Community Association has performed maintenance dredging under the City of Newport Beach's U.S. Army Corps of Engineers (USACOE) Regional General Permit No. 54 and has routinely pumped the sand back to China Cove Beach. The applicants have stated that the amount of sand coming to the marina has dramatically increased over the years. The applicants further state that due to financial concerns and other issues, the Association has skipped several years of dredging. The results of this are that the sand has built to a height of up to +4-foot MLLW within the marina, while the design depth is -9-foot MLLW. This has caused damage to the marina and now the migrating sand is affecting the property and dock (2491 Ocean Boulevard) north of the project dredge site. In addition, the migrating sand is in the process of burying eelgrass beds at the 2491 Ocean Boulevard site. A

previous maintenance dredging project was completed in August 2005 that successfully opened up a couple of the slips in the marina on a temporary basis.

To the north of the project site are single-family residences and a dock. To the east of the project site is an apartment complex associated with the Channel Reef Community Association Marina. To the south of the project site is an existing groin and China Cove Beach. To the west of the project site is Newport Bay Harbor.

2. Project Description

The proposed project consists of dredging the Channel Reef Community Association Marina to remove 7,000 cubic yards of sand and temporarily pump it to a sand-berm dewatering pit at China Cove Beach (Exhibits #2-3). The sand will be removed from the marina via hydraulic suction dredge and would be pumped approximately 350-feet south to a temporary 6-foot high sand-berm dewatering pit (located above the mean high water line) constructed on the adjacent China Cove Beach, a City owned sandy public beach. Tail water would return to the harbor via a temporary 12-inch pipeline. The pit will contain approximately 1,500 cubic yards at each filling. After the pit is filled (which will take approximately 4-5 days), the sand will be removed by a loader and transported via dump truck to the designated sites and spread (discussed below). Each emptying cycle is estimated to take 3 days and after, the pit will again be constructed and filled. Upon completion of the project, the City will return the dewatering site to its original grade and remove the tail water pipeline. The proposed project would take place only during the off-season months of October thru April and would take approximately less than 8 weeks to complete. Since the sand is of high quality, the sand will then be distributed to two different sites for beach nourishment: 1) Ruby Avenue Beach (1,500 cubic yards) and 2) Corona Del Mar State Beach (5,500 cubic yards) (Exhibits #1 & 3). Ruby Avenue Beach is a public beach located on Balboa Island at North Bay Front and Ruby Avenue, between Diamond Avenue to the east and Collins Avenue to the west. This site was once a popular public beach, but over the years sand has significantly been lost. A total of 1,500 cubic yards of sand will be brought to the beach and spread to bring the elevation to +7.5-feet MLLW. The remaining 5,500 cubic yards of sand will be transported to Corona Del Mar State Beach, a public beach that is leased and operated by the City of Newport Beach. The sand will be used to supplement low areas of the beach crown where high tides and southerly winter storm swell cause flooding of the adjacent parking lot and associated structures. The sand will also be used to enhance the public sand volleyball courts.

The City is conducting a portion of this project using some of the in-lieu fees transferred to the City of Newport Beach pursuant to a Memorandum of Understanding between the City and the Coastal Commission signed on June 15, 2006 for sand replenishment in the Crystal Cove Littoral Subcell. The collection of in-lieu fees was associated with Coastal Development Permit No A-5-IRC-99-301, which was an appeal brought to the Commission for development consisting of: development of a 980 acre area, including mass grading, the construction of backbone infrastructure and a subdivision for future residential and recreational development. The in-lieu fee was required by Special Condition No. 6 of this permit, which required the Irvine Community Development Company to consent to participate in a fair share program for beach replenishment in the Crystal Cove Littoral Subcell to mitigate for the fact that the proposed project would result in the loss of 160 cubic yards (208 tons) per year of coarse beach material that would otherwise be available to the littoral subcell. Special Condition No. 6 also required that the Irvine Community

Development Company pay \$163,380 in-lieu of providing sand to replace the sand and beach area that would be lost due to the impact of the development approved in Coastal Development Permit No. A-5-IRC-99-301. In addition, Special Condition No. 6 required that the funds be used, in part, to implement projects, which provide sand to the beaches within the Crystal Cove littoral sub cell (between the east jetty of Newport Harbor and Abalone Point).

Corona Del Mar State Beach is within the Crystal Cove littoral subcell, thus, sand replenishment at this beach funded with some of the in-lieu fees collected pursuant to the requirements of Coastal Development Permit Coastal Development Permit No. A-5-IRC-99-301 is consistent with the intended use of the in-lieu fees.

3. Prior Commission Action On Site

Coastal Development Permit No. 5-93-205-(Channel Reef Community Association)-
De Minimis Waiver

At the July 1993 California Coastal Commission Hearing, the Commission approved the revision of the existing marina. Post project, the marina will consist of the following: 1) 8 slips, each 36-feet long, sharing a common 153-foot long, 6-foot wide float; and 2) a 147-foot long, 8-foot wide float (35-feet from the 153 foot long float) that will run parallel to the bulkhead. These two floats will run parallel to the bulkhead and the post construction marina will occupy less area and will not extend as far channelward as the existing dock.

B. DREDGING AND FILL OF COASTAL WATERS

Section 30233 of the Coastal Act states

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

The proposed dredging and beach nourishment project includes the dredging of sediment from harbor waters and placement of dredged material on the beach, below the mean high tide line (MHTL). The extraction of sediment from harbor waters is dredging. In addition, the placement of any material below the MHTL is fill as defined by Section 30108.2 of the Coastal Act. Section 30233 of the Coastal Act allows dredging and filling of coastal waters or wetlands only where feasible mitigation measures have been provided to minimize adverse environmental effects, and for only the eight uses listed in Section 30233 of the Coastal Act, as stated above.

In this case, the proposed dredging and beach nourishment would occur in order to maintain existing and/or restore vessel berthing and mooring areas. Meanwhile, fill would result from the restoration of beaches where erosion has narrowed the prior width of the beach. The proposed development includes the dredging and beach nourishment of up to 7,000 cubic yards of sediment. This proposed dredging and fill is allowable pursuant to Sections 30233(a)(2), 30233(a)(7) and 30233(b) of the Coastal Act.

Section 30233 of the Coastal Act also requires that the proposed dredging and fill of coastal waters be the least environmentally-damaging feasible alternative including the use of feasible mitigation measures to reduce adverse environmental effects. The applicants are proposing measures to ensure that the proposed project is the least environmentally-damaging feasible alternative and has included mitigation measures to avoid adverse effects on the marine environment. As proposed, the proposed dredging would only occur in previously dredged areas to restore previously dredged depths. There are no feasible alternatives to the proposed dredging, which would restore the berthing and navigational channels at the subject sites and be less environmentally damaging. The proposed dredging would be the minimal amount to restore the areas to their previously dredged depths. Therefore, the Commission finds the proposed project, as conditioned, is consistent with Section 30233(a) of the Coastal Act.

C. SAND SUPPLY

Section 30233(b) of the Coastal Act states, in relevant part:

...Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

The applicants are proposing to use all beach suitable dredge material for beach nourishment purposes. In order to ensure that the materials proposed for beach nourishment are suitable for such purposes, the applicants have performed sediment testing to evaluate the physical characteristics of the materials. At the Channel Reef site, three cores were collected from the material to be dredged, which indicated sand contents of 98%, 98% and 88%. The sand content at the proposed receiver beaches were as follows: Ruby Avenue Beach was 90%; and 87% at Corona Del Mar State Beach. Furthermore, the ACOE have preliminarily reviewed the project and agreed that the dredged material would be suitable for beach nourishment: *"Based on the above grain size analysis, as well as previous physical and chemical sediment testing and bioassays completed in the vicinity of the proposed project (associated with the reauthorization of Regional General Permit 54, Corps File No. 200501233, report entitled: November 2005 report, "Dredged material Evaluation for the Review of Regional General Permit-54, Newport Beach, California" prepared by Weston Solutions, Inc.), the Corps has determined sediments from the proposed dredging site would be suitable for disposal on the two proposed beach sites, Ruby Ave. and Corona Del Mar."* The Commission has also previously reviewed and concurred with the above-referenced physical and chemical testing during its approval of Coastal Development Permit No. 5-06-117 and Consistency Certification No. CC-031-06. Those findings, dated September 28, 2006, are herein incorporated by reference. In order to ensure that only beach quality materials are used to nourish the beaches, **SPECIAL CONDITION NO. 1** requires that material utilized for beach nourishment shall have a sand content that meets all applicable federal and state beach nourishment requirements. The material utilized for beach nourishment shall have a sand content that is either equal to or greater than 80% sand or be between 75% and 80% and within 10% of the sand content of the receiver beach. Based on the testing cited above, the proposed beach nourishment material would comply with these requirements.

The proposed use of dredged material for beach nourishment will partially mitigate the ongoing erosion of the City's beaches, helping to protect recreational use of the beach and existing structures along the beach. Section 30233(b) of the Coastal Act encourages the use of dredged material for beach replenishment. As proposed and conditioned, the project will not have any adverse impacts on local sand supply. Therefore, the project, as conditioned, is consistent with Section 30233(b) of the Coastal Act.

D. WATER QUALITY AND THE MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233(b) of the Coastal Act states:

Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats...

1. Eelgrass

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat and foraging area for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and water fowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

On April 26, 2006, The City of Newport Beach Harbor Resources Department conducted eelgrass inspections at the Channel Reef Community Association Marina and Ruby Avenue Beach, which found that no eelgrass was in the vicinity of either of these two (2) project sites. In addition, as stated previously, migrating sand is in the process of burying eelgrass beds at a dock located at 2491 Ocean Boulevard that is north of the marina to be dredged. The applicants have stated that the proposed project will avoid encroachments into that eelgrass bed by not allowing dredging to occur within 15-feet of the eelgrass bed. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the December 2006 Coastal Commission Hearing and by this time the eelgrass surveys would not continue to be valid since 60-days have passed since the survey was completed. Thus, up-to-date eelgrass surveys must be conducted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction.

2. *Caulerpa taxifolia*

Also, as noted above, eelgrass is a sensitive aquatic plant species, which provides important habitat for marine life. Eelgrass grows in shallow sandy aquatic environments, which provide plenty of sunlight. Several years ago, a non-native and invasive aquatic

plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), was discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G), which occupies similar habitat. *C. taxifolia* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing¹.

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species including *C. taxifolia*.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

¹ References

Meinesz, A. (Translated by D. Simberloff) 1999. Killer Algae. University of Chicago Press

Chisholm, J.R.M., M. Marchioretta, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of *Caulerpa taxifolia* (Chlorophyta). *Marine Ecology Progress Series* 201:189-198

Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga *Caulerpa taxifolia* in the Mediterranean. *Marine Ecology Progress Series* 182:299-303

Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for *Caulerpa* species: Fates of fragments and implications for management of an invasive weed. *Marine Ecology* 20:307-319.

Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga *Caulerpa taxifolia* introduced to the Mediterranean Sea. *Marine Ecology Progress Series* 172:275-280.

Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.

Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California Caulerpa Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

If *C. taxifolia* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. On April 26, 2006, The City of Newport Beach Harbor Resources Department conducted *Caulerpa taxifolia* inspections at the Channel Reef Marina and Ruby Avenue Beach, which found that no *Caulerpa taxifolia* was in the vicinity of either of these two (2) project sites. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendized for the December 2006 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* surveys would not continue to be valid since 90-days have passed since the survey was completed. Thus, up-to-date *Caulerpa taxifolia* surveys must be conducted. Therefore, in order to assure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicants, prior to commencement of development, to survey the project areas for the presence of *C. taxifolia*. If *C. taxifolia* is present in the project area, no work may commence and the applicants shall seek an amendment or a new permit to address impacts related to the presence of the *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is legally required.

3. Regional Water Quality Control Board (RWQCB)

The Regional Water Quality Control Board (RWQCB) oversees impacts upon water quality in the region. Since the proposed project has the potential to affect water quality, the development requires review by the RWQCB. The RWQCB has reviewed the project and has issued a Clean Water Act Section 401 Water Quality Standards Certification dated July 20, 2006 for the proposed project.

4. U.S. Army Corps of Engineers (USACOE)

The U.S. Army Corps of Engineers (USACOE) oversees the planning, designing, building and operation of water resources and other civil works projects. The project will require approval from the USACOE and the applicants have stated that they have applied for a permit from them. However, no evidence of review and approval of the proposed project from the USACOE has been submitted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 4**, which requires the applicants to submit evidence of the USACOE and any other required state or federal agency discretionary permits.

CONCLUSION

To minimize the adverse impacts upon the marine environment, **THREE (3) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 2** identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction; if potential impacts are identified, mitigation would be required. **SPECIAL CONDITION NO. 3** requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is

discovered, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicants have revised the project to avoid any contact with *Caulerpa taxifolia*. **SPECIAL CONDITION NO. 4** requires that the applicants provide evidence of USACOE and all other required state or federal discretionary permits for the proposed project. Only as conditioned does the Commission find that the proposed project is consistent with Section 30230, 30231 and 30233(b) of the Coastal Act.

F. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

The proposed project will mitigate beach erosion and provide for the continuing and increased recreational use of the Corona Del Mar State Beach and the Ruby Avenue Beach (a Newport Harbor Bay Beach) by the public. While the temporary 6-foot high sand-berm dewatering pit (located above the mean high water line) will be constructed on China Cove Beach, which is a City owned sandy public beach adjacent to the Channel Reef Association Marina, the dewatering pit and associated development on China Cove Beach only take about less than 8 weeks to complete and is scheduled to occur sometime from October thru April, which is during the non-peak beach use season. The applicants have stated that lateral and vertical access at China Cove Beach will be maintained during construction. The proposed beach replenishment development at Corona Del Mar State Beach and the Ruby Avenue Beach will increase the size of the beach and will provide a larger area for recreational use. The nourishment activities will also only take about less than 8 weeks to complete and is scheduled to occur sometime from October thru April, which is during the non-peak beach use season. In order to ensure that access is continually provided at each of the project sites during construction and that peak beach use is not affected by the development, the Commission is imposing **TWO (2) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 5** requires the applicants to submit staging plans for each of the project sites showing the location of all equipment and prohibiting storage on the beach. **SPECIAL CONDITION NO. 6** prohibits construction during the “peak use” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210 of the Coastal Act.

G. HAZARDS

Section 30253 of the Coastal Act states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The proposed development is located in an area subject to tidal action. The tidal environment is dynamic and there are risks associated with development in such areas. For instance, erosion has occurred in front of the bulkheads where beach nourishment is proposed. The fact that the applicants are proposing beach nourishment to restore pre-existing beaches indicates that erosion does occur. However, the applicants are not proposing to increase erosion hazards by increasing the size of beaches beyond pre-existing conditions. Therefore, the proposed project minimizes this hazard.

However, the proposed development only offers a temporary solution to erosion that occurs along the beach. The applicants need to be advised of the temporary nature of the proposed development. Therefore, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires the applicants to acknowledge the temporary nature of the development and the benefits provided by the development. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

H. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies, among others, that relate to development at the subject site:

Water Quality, Policy 4.1.2-1 states,

Maintain, enhance, and, where feasible, restore marine resources.

Water Quality, Policy 4.1.2-5 states,

Continue to require Caulerpa protocol surveys as a condition of City approval of projects in the Newport Bay and immediately notify the SCCAT when found.

Eelgrass Meadows, Policy 4.1.4-1 states,

Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.

Eelgrass Meadows, Policy 4.1.4-1 states,

Where applicable require eelgrass and Caulerpa taxifolia surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and Caulerpa taxifolia Survey protocols.

Dredge Spoils Disposal, Policy 4.2.4-3 states,

Dredged materials suitable for beneficial reuse shall be transported for such purposes to appropriate areas and placed in a manner that minimize adverse effects on the environment.

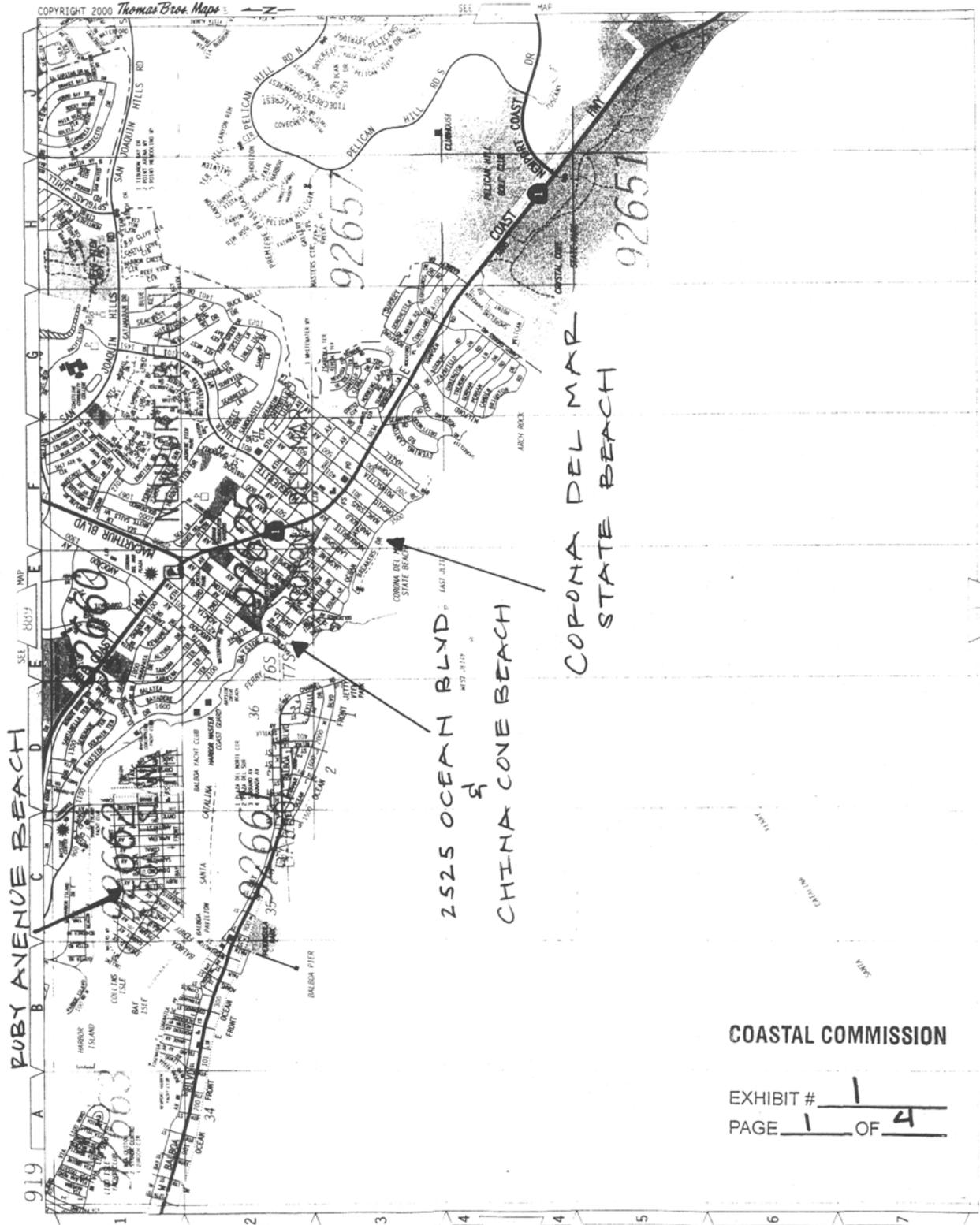
The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the water quality, marine environment, public access and hazard policies of Chapter 3 of the Coastal Act. Mitigation measures include special conditions requiring eelgrass surveys and submittal of a staging plan.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



COASTAL COMMISSION

EXHIBIT # 1
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CHANNEL REEF COMMUNITY ASSOCIATION MARINA

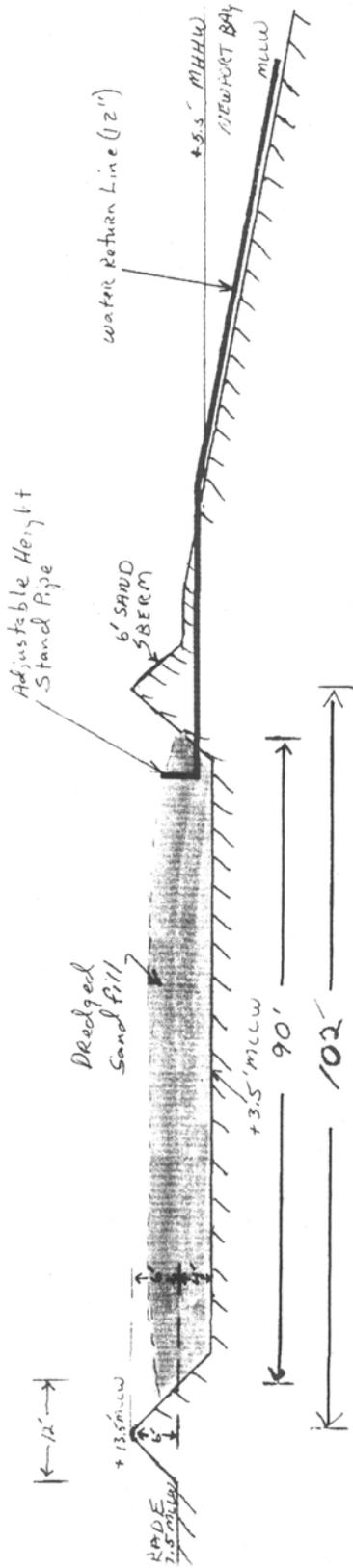
<p>CITY OF NEWPORT BEACH</p> <p>VICINITY MAP NEWPORT BAY, CALIFORNIA</p>	<p>COASTAL COMMISSION</p> <p><input checked="" type="checkbox"/> NO EEL GRASS WITHIN 15' OF PROJECT AREA <input type="checkbox"/> EEL GRASS IN THE PROJECT AREA</p> <p>Chris Miller <i>see Attached eelgrass survey</i> SIGNATURE</p> <p>105-2525 PERMIT # 7/12/06</p> <p>See Attachments Profile A EXHIBIT # 2 Profile B PAGE 1 OF 1 Profile C</p> <p>HARBOR RESOURCES CITY OF NEWPORT BEACH PROFILE Chris Miller <i>sluice</i></p> <p>SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.</p>
<p>2525 OCEAN BLVD</p> <p>101</p> <p>DAHLIA AVE.</p> <p>COVE ST.</p> <p>Temp Dewatering Pit ~21500 cu yds Profile C</p> <p>Profile A</p> <p>Bulkhead</p> <p>FLOAT</p> <p>Bulkhead</p> <p>GROIN</p> <p>Dredging Area</p> <p>Profile B</p> <p>Water Return Pipe</p> <p>Existing Storm Drain</p> <p>Bulkhead line</p> <p>Bulkhead line</p> <p>PLAN VIEW 1"=80'</p> <p>LICENSANT'S NAME CHANNEL REEF ASSOC. JOB ADDRESS 2525 OCEAN BLVD. DATE 4/12/06</p>	

• CHINA CONE BEACH •

DEWATERING PIT - PROFILE C
4/17/06 M.S.

COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 3



#2

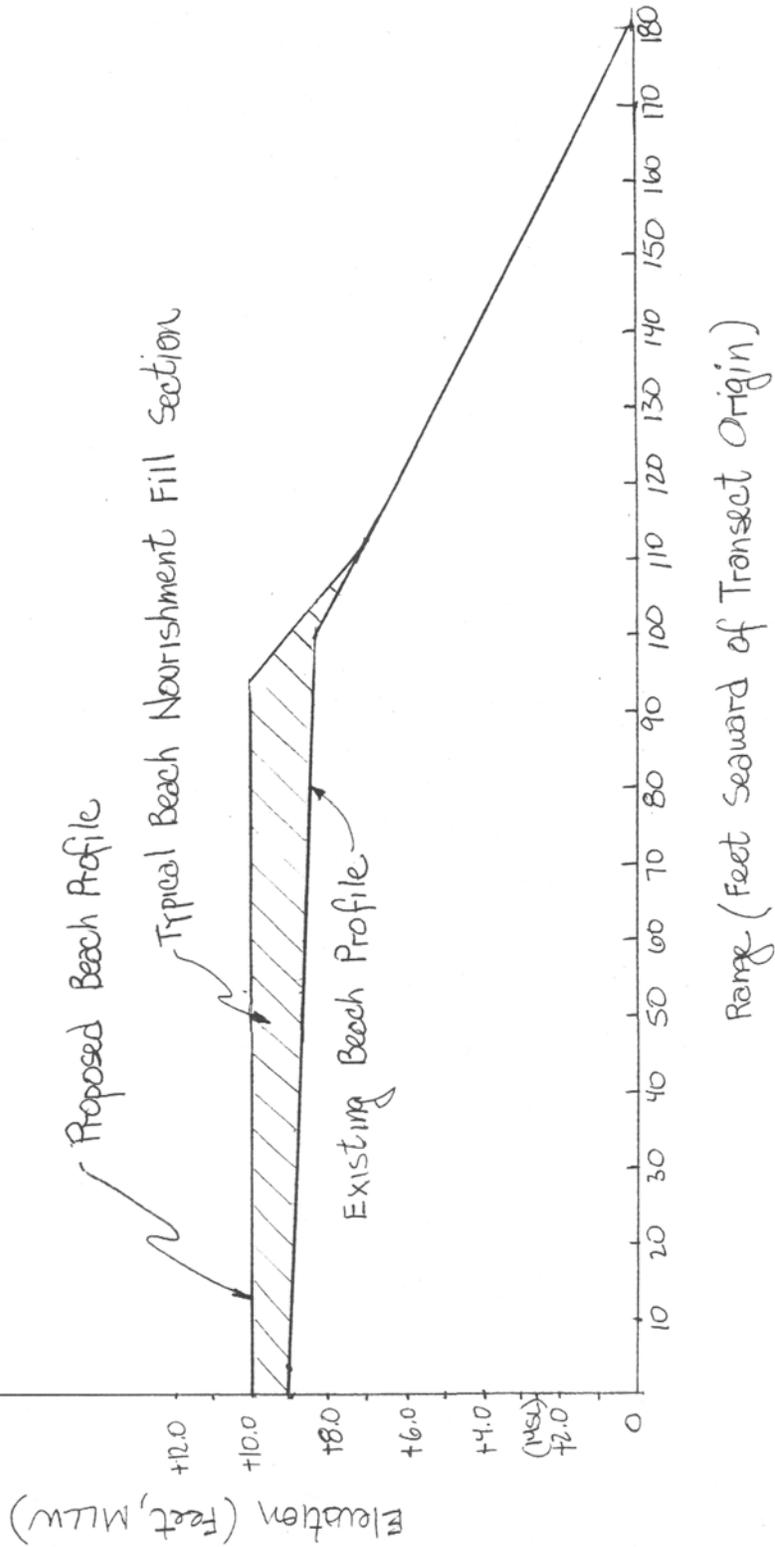
'B' Beach Profile Line - Transect OC-30

Typical Cross-section

• CORONA DEL MAR STATE BEACH •

COASTAL COMMISSION

EXHIBIT # 3
PAGE 2 OF 3



5/23/06

Beach Profile - N. Bay Front & Ruby Ave

• RUBY AVENUE BEACH.

COASTAL COMMISSION

EXHIBIT # 3
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Profile #1

